Filed 12/13/01

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| In re JOSE P., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>JOSE P.,<br>Defendant and Appellant. | A093958<br><br>(Contra Costa County Super. Ct. No. J99-00376) |

After finding true allegations that the minor committed a felony violation of Penal Code[1] section 422 (making terrorist threats) and a misdemeanor violation of section 236/237 (false imprisonment), the trial court ordered a suspended commitment to the California Youth Authority, on condition that the minor complete a residential treatment program. The minor subsequently admitted a violation of probation based on his leaving the program and the court committed him to the Youth Authority. The minor contends on appeal that his commitment to the Youth Authority was an abuse of discretion. We affirm.

[1] All further section references are to the Penal Code unless otherwise noted.

## I.
## BACKGROUND

The minor's summary of the underlying facts is sufficient for the purposes of this appeal. Basically, allegations of making terrorist threats and false imprisonment were sustained against the minor, after a contested jurisdictional hearing, based upon the testimony of his former girlfriend detailing threats he had made against her. The minor had been on probation at the time of the offenses for misdemeanor violations of unlawful taking or driving of a vehicle (Vehicle Code § 10851, subd. (a)) and providing false identification to a police officer (§ 148.9, subd. (a).) At the dispositional hearing, the court stayed a California Youth Authority commitment, conditioned upon the minor completing a residential drug treatment program. Two days later, a supplemental petition was filed alleging that the minor violated probation by leaving the court-ordered placement. The minor admitted this violation and was committed to the Youth Authority.

## II.
## DISCUSSION

The minor contends that his commitment to the Youth Authority was an abuse of discretion because a stayed or suspended commitment "constitutes a predetermined outcome which contravenes the rehabilitative purpose of juvenile court law," relying on the reasoning of *In re Ronnie P.* (1992) 10 Cal.App.4th 1079.[2] As respondent concedes, this case states that juvenile courts are without authority to order suspended or stayed Youth Authority commitments, as such commitments would involve "impermissible predetermination[s] of dispositional issues prior to any hearing." (*In re Ronnie P.*, *supra*, 10 Cal.App.4th at p. 1088.) The court also held that when a minor comes before the court for the ultimate disposition, the court must reassess the entire dispositional record and may not merely impose the suspended sentence as " 'self-executing.' " (*Ibid*.)

[2] The minor also cites *In re Babak S.* (1993) 18 Cal.App.4th 1077, which reaches a similar conclusion.

As one recent case has noted, however, "We . . . find that the juvenile court had the authority to stay the commitment to the California Youth Authority. The minor relies on the decision in *In re Ronnie P.* [citation], which found that there was no authority for a court to suspend or stay a commitment to the California Youth Authority . . . . [N]umerous cases since *Ronnie P.* have disagreed with its reasoning and have approved stayed commitment orders. (See *In re Jorge Q.* (1997) 54 Cal.App.4th 223, 236, *In re Chad S.* (1994) 30 Cal.App.4th 607, 613, and *In re Kazuo G.* (1994) 22 Cal.App.4th 1, 9-11.)" (*In re Melvin J.* (2000) 81 Cal.App.4th 742, 755.)

We agree with this line of more recent cases which find that the court has the authority to stay or suspend a commitment to the California Youth Authority. The only remaining question, then, is whether the trial court erred in any manner when it ultimately imposed this commitment after the minor's admission of a violation of probation. As the court in *Melvin J.*, *supra*, explains, under former Welfare and Institutions Code section 777, subdivision (a), a court could not lift a stay of a Youth Authority commitment, after the filing of a noticed supplemental petition, unless it not only found that a violation of probation had occurred, but also (1) held a hearing as to the efficacy of the prior disposition, (2) considered independently on the whole record whether the prior dispositional order had entirely failed, and (3) determined if a more restrictive level of confinement was necessary for the minor's rehabilitation. (*In re Melvin*, *supra*, 81 Cal.App.4th at p. 757.) As respondent notes, however, Welfare and Institutions Code section 777 was amended by Proposition 21, which became effective March 8, 2000, to eliminate this requirement. The underlying offense, the original wardship petition and the probation violation in the present case occurred after that date. The current version of Welfare and Institutions section 777 thus applies to this case.[3] As the court in *Melvin J.* explained, "If . . . the newly amended version of Welfare and Institutions Code

[3] Given the date of the offense and filing of the original petition in this case, which led to the imposition of the stayed commitment to the Youth Authority, we find no ex post facto violation in the application of the amended Welfare and Institutions Code section 777 to this case. (See *In re Melvin J.*, *supra*, 81 Cal.App.4th at pp. 757-760.)

section 777, subdivision (a), approved as part of Proposition 21, applies, . . . there are no further findings required for the juvenile court to make since it . . . already determined that a violation of a probation condition occurred." (*In re Melvin J., supra*, 81 Cal.App.4th at p. 757.)

Here there was a supplemental petition filed pursuant to Welfare and Institutions Code section 777 and the minor admitted the violation of probation. No further findings were required by the trial court before it lifted the stayed or suspended commitment to the Youth Authority.[4] The court did not abuse its discretion in the imposition of the Youth Authority commitment.

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[4] The juvenile court commissioner who lifted the stay and imposed the Youth Authority commitment in the present case was not the judge who originally ordered the stayed commitment. The commissioner did indicate, prior to lifting the stay, that he had read the probation officer's supplemental report, which detailed the circumstances relevant to disposition. Additional comments were solicited from the probation officers, both counsel, the minor, and his parents. After indicating to the minor that the original judge had made it very clear that if he did not complete the program, he would go to the Youth Authority, the commissioner stated "I see absolutely no reason not to follow the recommendation." He then made the requisite findings for a commitment to the Youth Authority (that the minor had been tried on probation, that local resources had proven ineffective in rehabilitating him, and that he would benefit from a Youth Authority commitment). Given these circumstances, the commissioner's imposition of the previously stayed commitment was not the imposition of a "self-executing" order; the court did " 'reassess the dispositional issues in light of the then-prevailing circumstances.' " (*In re Jorge G., supra*, 54 Cal.4th 223 at p. 237, citing *In re Kazuo G., supra*, 22 Cal.App.4th at p. 11.)

## III.
## CONCLUSION

The judgment is affirmed.

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Sepulveda, J.

We concur:

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Reardon, Acting P.J.

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Kay, J.